

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of ) Application No. C-3095  
Qwest Corporation, Denver, )  
Colorado, for Arbitration of )  
Interconnection Rates, Terms, )  
Conditions, and Related ) ORDER  
Arrangements with AT&T )  
Communications of the Midwest, )  
Inc., and TCG Omaha, Denver, ) Entered: July 27, 2004  
Colorado. )

BY THE COMMISSION:

On January 22, 2004, Qwest Corporation (Qwest) filed a Petition for Arbitration with this Commission for arbitration of open issues related to its interconnection negotiations with AT&T Communications of the Midwest, Inc. and TCG Omaha (collectively, AT&T) pursuant to Section 252(b) of the Telecommunications Act of 1996. AT&T and Qwest agreed to arbitration before John P. Kern. The Arbitrator issued a decision on arbitration on May 4, 2004. AT&T filed comments to the Arbitrator's Decision on June 21, 2004. Qwest filed comments on June 28, 2004. Oral argument was held before the Commission on July 7, 2004. Ms. Jill Vinjamuri Gettman and Ms. Mary Rose Hughes appeared on behalf of Qwest. Mr. Loel Brooks appeared on behalf of AT&T.

O P I N I O N   A N D   F I N D I N G S

AT&T challenges the Arbitrator's decision regarding the application of a relative use factor to federally-tariffed private line transport services (PLTS) (Issues 15/16) and the exclusion of internet-bound traffic from the relative use factor for interconnection facilities (Issue 17). The parties do not challenge the Arbitrator's decision with respect to the remaining issues.

AT&T argues that Qwest should be obligated to compensate AT&T for costs associated with transporting Qwest's local traffic that terminates on facilities that AT&T leases from Qwest pursuant to Qwest's federal tariff, Tariff FCC No. 1. AT&T contends that the Arbitrator's decision violates 47 C.F.R. § 51.703 and 51.709(b) and that no exception exists for traffic carried on PLTS.

Qwest contends AT&T's proposed language requiring it to compensate AT&T for such traffic would result in an apportioning of a PLTS between local exchange and other uses in violation of its federal tariff, which does not permit application of a relative use factor to PLTS. Qwest further asserts that AT&T

controls whether excess capacity on its idle circuits is used for local traffic and does not incur any additional charges from Qwest for using these idle circuits. Qwest also contends that AT&T has agreed to Qwest's proposed language on this issue in six other states.

We find that that AT&T's proposed language would result in a modification of Qwest's federal tariff. We find that the Arbitrator appropriately found that the Commission is without jurisdiction to modify a federal tariff.<sup>1</sup> Furthermore, we find that because Qwest does not impose additional charges on AT&T for the use of these idle circuits, Qwest's proposed language does not violate 47 C.F.R. § 51-703; 51-709(b) prohibiting Qwest's assessment of charges for local traffic originating on its own network. We, therefore, find that the Arbitrator's recommendation should be adopted and Qwest's proposed language relating to Issues 15/16 should be approved.

With respect to whether internet-bound traffic should be excluded from the relative use factor for interconnection facilities reflected in the parties' Issue 17, we find that the Arbitrator's decision is consistent with the Commission's prior order in *Level 3 Communications, LLC of Broomfield, Colorado Seeking Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Communications, of Denver, Colorado*, Application No. C-2780 dated April 22, 2003. We therefore find that the Arbitrator's decision should be adopted with respect to this issue and Qwest's proposed language approved.

Upon full consideration of the facts and circumstances, the Commission finds that the Arbitrator's decision should be adopted and that the interconnection agreement filed by the parties should be approved.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Arbitrator's decision in the above-captioned matter shall be and is hereby approved.

IT IS FURTHER ORDERED that the interconnection agreement filed by the parties as a result of the arbitration in the above-captioned matter should be and hereby is approved without revision.

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<sup>1</sup> Order Granting Qwest's Motion and Dismissing Complaint, *Alltel Communications, Inc. v. Qwest Corp.*, FC-1310 (April 15, 2003).

MADE AND ENTERED at Lincoln, Nebraska, this 27th day of  
July, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Vice Chairman

ATTEST:

Executive Director